

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL TRADE COMMISSION**

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**COMMENTS REGARDING RETAIL  
ELECTRICITY COMPETITION**

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**DOCKET NO. V010003**

**COMMENTS OF ALLEGHENY ENERGY, INC.**

**I. INTRODUCTION**

Pursuant to the Federal Trade Commission's ("FTC") Notice Requesting Comments on Retail Electricity Competition Plans,<sup>1</sup> Allegheny Energy Inc. and its subsidiaries, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company hereby submits the following comments in response to the Commission's request.

**II. BACKGROUND**

Allegheny Energy, Inc. is a diversified energy company, headquartered in Hagerstown, MD. The Allegheny family of companies consists of three regulated electric public utility companies, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company and a natural gas company, Mountaineer Gas Company, which is a wholly owned subsidiary of Monongahela Power, dba Allegheny Power.<sup>2</sup> Allegheny delivers electrical energy to about three million people in parts of five states - Maryland, Pennsylvania, Virginia, West Virginia and Ohio, and natural gas to about 230,000 customers in West Virginia. With the exception of West Virginia, all the states to which Allegheny provides service have implemented retail electricity competition plans.

**III. COMMENTS**

Allegheny welcomes the opportunity to share its experiences with retail competition with the FTC. Our comments will focus on retail competition in Pennsylvania, which began January 1, 1999 and Maryland, which began July 1, 2000.

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<sup>1</sup> Federal Trade Commission, Notice Requesting Comments on Retail Electricity Competition Plans, Docket No. V010003, February 28, 2001.

<sup>2</sup> In addition to the regulated electric public utility companies and the natural gas company, the Allegheny family includes Allegheny Energy Supply that operates and markets competitive retail and wholesale electric generation in competitive markets and operates regulated generation affiliates, and Allegheny Ventures which actively invests in and develops telecommunications and energy-related products.

## **A. History and Overview**

In Pennsylvania and Maryland, concern about electricity prices led each state to implement a retail competition plan. In Pennsylvania, electricity prices were 14% greater than the national average. Pennsylvania was home to two of the highest cost utilities in the country and one of the lowest under traditional regulation. In Maryland, rate base/rate of return regulation had led to statewide electricity prices at the level of the national average. Maryland implemented retail electricity competition in substantial measure to maintain and possibly improve the state's competitive posture for commercial and industrial customers relative to neighboring states, and to encourage technical innovations.

Even though price reductions *per se* were not expected, Maryland hoped that retail competition would do a better job than regulation in disciplining the market and prices. Although retail competition benefits are expected statewide and for all customer classes in Maryland, it is expected that large commercial and industrial customers will be among the first to benefit. To determine the success of the program, Maryland will use surveys to gauge the extent to which customers understand their retail choice opportunities regardless of whether they elect a new supplier. That is, a customer's decision to remain with the existing supplier is an exercise in choice if the decision is made with knowledge of competitive alternatives.

It is too early to gauge the most and least successful elements in Maryland's retail competition program. The Maryland Public Service Commission (MD PSC) has certified several generation projects since enactment of the legislation, and others are in the certification process. Also, consumer education and universal service programs are underway, and some customers have switched suppliers. State officials are placing some reliance on aggregation and internet marketing to bring the benefits of retail choice to residential customers.

In Pennsylvania, reduced prices were the major benefit expected from retail competition. Expectations were for savings for customers in all areas and all classes. However, Pennsylvania recognized that the residential market would develop more slowly. To determine the success of its plan, the state measures the number of active suppliers, number of customers who have switched, savings, and additional services offered. When evaluating these results, it is important to keep in mind that the current high wholesale market prices are compared to retail rate caps, which has temporarily suppressed retail activity. The most successful aspect of Pennsylvania's plan is that it did not force divestiture and force spot purchases from a power exchange. The least successful aspect of the plan is that products and services have been slow to develop because of small retail margins.

## **B. Consumer Protection Issues**

Consumers in Maryland have many sources of information about retail choice and competing suppliers, including advertising from suppliers, and electric companies, and the MD PSC's consumer education program. The MD PSC obtained \$12 million in state funding for consumer education efforts for the first three years of the

retail competition program, including \$6 million for the first year. The Commission hired research/public relations/advertising consultants to gauge consumer understanding of retail choice, design and implement an education program, and measure program success. The consultants were hired after issuance of a request for proposals. A panel of consumer, MD PSC and industry experts evaluated the responses to the request for proposal, and recommended a group of consultants for the contract. The Commission accepted the panel's recommendation. The education program's success is measured by the number and quality of responses to questions designed to gauge consumer understanding of the competitive choices available to them. The program has been successful.

Slamming and cramming have not been problems in Maryland. Maryland allows customers to enroll with new suppliers via the internet, over the telephone, and through paper contracts. Suppliers must be able to show proof of contract. The MD PSC possesses statutory authority to address and penalize slamming and cramming should they occur, and has confirmed that authority in several orders issued on consumer protection issues. In addition, Maryland has adopted other provisions, such as prohibitions against negative enrollments (check off here and return this card or the customer is automatically enrolled), payment prioritization when the customer selects one biller for both generation and distribution services, and anti-discrimination provisions. We discern no adverse impacts from these provisions.

Maryland's Retail Competition Plan permits aggregation, and the MD PSC has licensed several aggregators and other suppliers to provide aggregation as one of their services. Allegheny Energy Supply, Allegheny Energy's generation supply company, provides aggregation services in several other states, because it can help lower costs of reaching consumers, but has not done so to date in Maryland.

Maryland has licensing procedures for new suppliers to provide electricity to customers that includes a formal application and proof of financial and operational stability and reliability. Bonds are required for suppliers that accept deposits or prepayments from small customers. It is our understanding that few, if any, suppliers require deposits or prepayments from small customers. Suppliers must certify that they will abide by all MD PSC regulations, which include slamming and cramming provisions. To our knowledge, no supplier in Maryland, licensed or unlicensed, has had enforcement action taken against it. To date, the MD PSC's requirements do not seem to have erected a barrier to competition.

The MD PSC has long-standing codes of conducts applicable to utilities and their affiliates. Unregulated supplier affiliates must disclose that they are not the same company as the regulated entity and that prices for supply services are not regulated by the MD PSC. The restrictions are in place and seem to be working. Customers in Allegheny Power's service territory seem to be knowledgeable about their supplier options. There has been little supplier advertising in Maryland. Some suppliers have attempted to differentiate their product from others (green, for example), but we are unaware of specific attempts to verify their claims. Certification procedures are being discussed.

Maryland prohibits release of customer information, except normal credit reporting exchanges, without customer consent. The MD PSC prohibits unauthorized sharing

of data between the utility and the affiliate. Customer privacy and market concerns underlay these requirements. Marketing seems to occur despite the presence of these requirements.

In PA, the Pennsylvania Public Utility Commission ("PA PUC") oversees statewide and local education campaigns. Success has been measured by customer awareness and shopping activity. The programs have been successful in teaching customers the mechanics of shopping for electricity. The campaigns are funded by the utilities as part of negotiated settlements and coordinated by the PA PUC through a stakeholders group. Consumers have plenty of information to make informed choices about suppliers. But choices are few now due to high wholesale costs. The state has no labeling requirements.

There have been some instances of slamming, but it has not been widespread. Rules were established by the PA PUC to prevent slamming and allow for enforcement. The PA PUC facilitated customer switching by providing information about suppliers and prices.

Aggregation is allowed and encouraged and has worked successfully in many instances. The PA PUC requires a license for all suppliers. The main protection comes from bonding. The licenses have not been a barrier to new suppliers as evidenced by the over 100 suppliers who have entered the market. The PA PUC through its code of conduct requires a disclaimer anytime an unregulated affiliate of a utility uses the name or logo of the parent. Customers appear to be knowledgeable about suppliers. According to the code of conduct, all suppliers, affiliates and third party suppliers must have equal access to customer information. The PA PUC requires specific notice (time and content) anytime a supplier changes terms of its service. Prior to the current run up in wholesale prices suppliers did extensive advertising. Some suppliers differentiate their product as environmentally friendly. Unlike Maryland, there have been some enforcement activities for inaccurate or misleading advertising statements.

Based on our experience, we do not find it necessary to implement additional national consumer protection standards. A comprehensive education program that is regularly evaluated to determine its effectiveness is all that is necessary. Many of the measures and procedures that have been implemented by Maryland and Pennsylvania to educate and protect consumers are the result of the Commissions' experiences with competition in the telecommunications industry. Therefore, federal labeling standards or federal slamming or cramming regulations are not necessary.

We do think that additional education campaigns are now needed to educate customers on market conditions and how customers can influence market prices by responding to peak demands. The educational efforts in Maryland and Pennsylvania were very successful in informing customers of the mechanics of participating in the competitive supply markets. It is now time to focus our education message on the need to control electrical consumption during peak periods to reduce peak demand and supply prices. This next step is currently being investigated in Pennsylvania and Allegheny is actively participating in the development of demand response programs and educational efforts designed to better prepare customers for the competitive market.

### **C. Retail Supply Issues**

Competition in Maryland seems to be developing first in high-cost areas. We have no information to provide on whether suppliers are exiting markets after beginning to provide retail service. We believe that Allegheny's low rates are minimizing the number of customers switching in our Maryland service territory. Customer acquisition and operational costs vary with customer size and class. On-line marketing and enrollment can be much less expensive than other methods. Maryland allows several enrollment methods, including internet and telephonic, in order to make it easier for customers to switch. Customers have the opportunity to remain on Provider of Last Resort ("PLR") service or return to PLR service after receiving competitive supply if they so choose. Maryland keeps PLR service with the existing utilities until July 1, 2003, unless extended by the MD PSC. The MD PSC is to adopt rules or orders governing the competitive selection of PLR services for use on and after July 1, 2003. We assume PLR is a necessary service, but do not know the extent or duration of that need in Maryland.

Suppliers in Pennsylvania have not experienced any systematic barriers to entering the market. Suppliers are attracted to a market by reasonable margins. Many suppliers have exited the market because of the current run up in wholesale prices that exceed retail rate caps in many areas. Retail margins are far and away the major determinant for suppliers to enter a market. Acquisition and operational costs are high right now compared to minimal profit margins for suppliers. The PA PUC has done an admirable job of standardizing procedures (*e.g.*, electronic data transfer system) to reduce suppliers' costs. To date, over 550,000 customers have switched to new suppliers, although some have returned to default service because prices currently exceed the retail shopping credits. The PA PUC adopted an order requiring commercial and industrial customers to stay with their provider of last resort supplier (utility) for a minimum of 12 months. This was done to prevent seasonal gaming. Some products and services are being offered to industrial customers (*e.g.*, generation buy back or peak demand response programs). Products and services have been slow to develop for the mass market because of small margins. The only exception has been the successful marketing of green power at a premium price.

PLR service provides consumer protection but doesn't allow the market to develop because customers are immune to price signals. In Pennsylvania, several utilities agreed to auction off a part of their default load to competitive suppliers. However, because of high wholesale prices compared to retail rate caps, the auctions have been for the most part unsuccessful. PLR service in Pennsylvania is necessary for the short term, but in order to encourage market development customers need to see price signals.

### **D. Retail Pricing Issues**

Competitive entry tends to occur first where PLR and default service (as defined in the question) prices allow suppliers to make profits. In Maryland, different PLR providers sell PLR service at different price levels, and have different policies/prices governing customers who take service from the PLR provider as a result of a supplier default. PLR rates are capped in Maryland for varying periods of time, the

longest being until 2008. Some default service rates are capped, while other companies' default rates are priced at market levels. Maryland required retail rate reductions effective with the start of customer choice of between 3 and 7.5%. The rationale was to ensure that customers get lower rates with the advent of competition. The rate reductions led to shopping credits lower than they would have been, and have slowed the development of competition. It is our understanding that some suppliers would like to serve customers during off-peak and shoulder seasons, and let their customers revert to PLR/default service during peak seasons, *e.g.* seasonal gaming. Some PLR providers have protections against such seasonal gaming, while others can ask the MD PSC to revisit the issue if gaming becomes a problem. We are aware of "seasonal gaming" by suppliers operating in Maryland.

Maryland implemented an Electric Universal Service ("EUS") program effective with the start of electric choice. EUS is available to low-income customers regardless of supplier. This program is not necessary as competition is introduced, but does allow an increased comfort level with retail choice among certain stakeholders. Higher prices necessitated by program funding requirements act to dampen public acceptance of retail choice in Maryland.

In Pennsylvania, Allegheny's PLR service retail rate caps have prevented suppliers from selling into the market because wholesale prices exceed the cap. In Allegheny's cases, the caps will exist for eight years. Retail rate reductions were negotiated by some utilities as part of an overall settlement. Many suppliers have provided seasonal rates as a way of navigating around the retail rate caps. Again, this is a form of seasonal gaming and led to the PA PUC order for a 12 months minimum stay for commercial and industrial customers returning to PLR. Public benefits programs were negotiated with each utility as part of the overall restructuring settlements. To date, they have not been a big factor affecting retail competition in Pennsylvania.

#### **E. Market Structure Issues**

The development of Regional Transmission Organizations ("RTO") has not affected retail competition in Maryland or Pennsylvania. PJM Interconnection, LLC ("PJM") has been in existence for years and facilitates transfers and sales of power in the Mid-Atlantic region, including Maryland and parts of Pennsylvania.

Maryland allowed utilities the option of divesting generating assets or not, a decision that was one outcome of the debate concerning stranded costs. Out of four investor-owned utilities in the State, one company voluntarily divested all of its generation, while another sold many of its plants. The plants were acquired by out-of-state companies. The utility that sold all of its plants has a contract with the purchaser for all of its PLR requirements. There is no need to monitor that mechanism since it renders customers indifferent to the ownership of the facilities. Thus, the State has not examined whether consolidation of generating plant ownership has occurred.

Maryland has adopted other provisions, such as prohibitions against negative enrollments (check off here and return this card or the customer is automatically enrolled), payment prioritization when the customer selects one biller for both

generation and distribution services, and anti-discrimination provisions. We discern no adverse impacts from these provisions.

To date it is not clear exactly where the federal/state jurisdictional boundary is on transmission issues. Generally, the MD PSC retains transmission line siting authority, and FERC retains pricing authority. What constitutes a transmission facility and what is a distribution facility is the unresolved terrain. FERC has articulated a definition that is open to some interpretation. The State monitors system reliability and demands action where necessary, and participates in PJM working groups.

Maryland did not undertake a statewide review of transmission adequacy prior to restructuring. In-State transmission resources are generally adequate, though. Access to out-of-State generation is generally adequate as well. Allegheny does not offer preferential transmission service for PLR purposes. Maryland possesses a one-stop shop transmission facility siting law that eases the burden of applying for permits to build more capacity. Maryland's siting laws and regulations have been minimally affected by deregulation.

Maryland has not rejected an application for a certificate to construct a transmission line, but with the advent of competition, a role for FERC in transmission line siting may be useful in counteracting any state's tendency toward parochialism. The need for a generating station is no longer an issue in permit proceedings, unless the applicant wishes to obtain the right to exercise the power of eminent domain in connection with the project. Over 2,000 mw of capacity has either been certificated or is in the process of being certificated in the State in the last year. Other projects totaling over 1,000 mw have been announced in the last couple of months. Federal jurisdiction over generation siting is unnecessary. The State monitors and has monitored in-State resources and demand. PJM requires adequate reserve margins, and Allegheny Energy maintains them as well. The market values capacity and, combined with PJM and Allegheny Energy reserve requirements, obviates the need for reserve sharing.

Allegheny Energy's power plants have operated at reliable levels since the advent of competition. The State of Maryland does not monitor outages and examine their causes.

Most of Pennsylvania is covered by the PJM and therefore, had a mature ISO in place. The PJM West concept proposes to expand PJM across most of Pennsylvania and Maryland. That effort has been received as favorable for competition by broadening the market footprint and rules. Pennsylvania did not require divestiture of generation assets. For utilities that voluntarily divested in Pennsylvania, the sales were used to determine stranded costs. Pennsylvania is home to a number of major generators and others are entering the market. Utilities that no longer own generation have either contracted with the purchasers of their generation to supply them with default power or built a portfolio of supply options. Pennsylvania has largely relied on PJM and the East Central Area Reliability Council ("ECAR") companies to operate the transmission grid. Regulated utilities with PLR responsibility do not receive preferential transmission treatment. Pennsylvania has the benefit of being a net exporter of power. Therefore, transmission constraints in

and out of the state were not a big issue prior to competition. In Pennsylvania, siting regulations are primarily handled at the local level. Several projects have received approval but many have not. The PA PUC monitors capacity and peak demand within Pennsylvania. Suppliers are required to maintain adequate reserve capacities by PJM and ECAR. PJM has an active installed capacity market. Generation plant outages in Pennsylvania have not been abnormal.

#### **F. Other Issues**

Maryland customers currently take service at rates that are capped. The state has a long history of studying and implementing time-of day and interruptible pricing policies, and has included incremental cost studies in its pricing decisions. The advent of a competitive market should move customers away from regulated rates and allow the forces of supply and demand to dictate prices.

Maryland was an early proponent of cogeneration projects. The MD PSC studied wind and other resources following the enacted of the Public Utility Regulatory Policies Act in 1978. The State is allowing competition in the retail marketplace as the best method of determining the resources necessary to meet consumer demand for power.

Since much of Maryland is in PJM, regionalism is a prevalent theme. The MD PSC also is studying regional approaches to fuel mix/emissions tracking. Regionalism may become necessary for the siting of some transmission line facilities, as noted above.

It is difficult to predict the development of new technologies and their impact on competition. Distributed generation does not play a significant role in Maryland to date. The State's restructuring law provides incentives for its development. Distributed generation, whether fuel cells, solar or other, could also change markets by moving power supply away from large central stations. Large-scale deployment appears to be at least a decade away. The main barrier seems to be high costs. The most likely area of change is in metering, where new technologies could make it cost-effective to replace functioning meters with tele-meters or radio-meters. The impact of such meters may not be substantial, but rather incremental. Such meters are cost-effective now for larger customers.

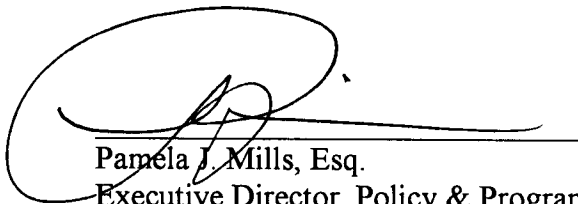
In Pennsylvania, the PA PUC has initiated a working group to explore demand response programs. That effort is just beginning. No incentives have been developed by this working group and the PUC has not moved away from average cost pricing. However, some utilities, including Allegheny, are offered demand response programs to large industrial customers to allow customers to respond to market conditions and prices. Allegheny is also developing a demand response program for residential customers and expects to have active customer participation by year-end. The PUC has not provided incentives for cogeneration, pumped storage, or other approaches. It recognizes that generation is an unregulated business and allows those transactions to occur without intervention. RTO development has been coordinated with neighboring states. So far, distributed resources are small. The PUC has recently initiated a working group to explore any barriers that might exist.



#### IV. CONCLUSION

Allegheny's overall experience with retail electricity competition has been favorable in the states where we operate that have implemented competition plans. We recognize that there are improvements that can and should be made to increase competition in the retail electric market, such as large-scale demand response programs. We are also mindful that it takes time to develop a vibrant competitive electricity market. We are concerned that the problems that have recently been encountered in certain parts of the country that have implemented competition plans will result in measures that will inhibit the development of competitive electricity markets. We are hopeful that your request for comments will initiate a dialogue that will result in a sound and reasoned approach for energy matters that balances the needs of the economy, the environment, the consumers, and the utilities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. Mills', is written over a horizontal line.

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